h. Contracts and Various Quasi Contracts

635 A legal obligation is atiñ, from tiñ * to tie. For a long time no distinction was made between a contract and a quasi /or implied/ contract, but, as the range of independent activity spreads, we may recognize among metiñ the genuine contract, mfañ atiñ, from fañ * to do really, on purpose, by design.

Underlying all metiñ is the idea of compensation, avutan or abutan, which might be interpreted as follows: any effect /atteint/, positive or negative, on the total legal personality of an individual through the act of another must lead to a positive or negative compensation restoring the status quo ante. In other words, whoever enriches another person, has a claim to compensation; whoever deprives another, owes compensation.

Thus arises the distinction between menge and avu or avuan which have sometimes been confused by being translated as "gain" or "profit." It /79/ seems that nsenge in fact referred specifically to commercial profit made outside the clan through trade, abom, to which compensation did not apply. Avu or avuan (from vu * to grow rich, to increase in wealth, with an * to grow, to increase) meant the natural increase in property, such as a harvest in relationship to the sowing /or/ the biological increase of a herd. If the avuan was made at the expense of a monyaŋ, compensation was called for. Nowadays the idea of avuan approximates that of interest, legitimate or illegitimate according to the case. The weakening of the old social structures at the same time tends to allow menge even within the clan.

675 The verb kuan, to sell, is merely the reciprocal form of the verb kus, to buy; thus kuan means literally, "one person's buying from another," with a now very attenuated implication of exchange. The verbs foi and folan, formerly almost synonymous with kus and kuan, have kept the sense of "exchange"; they are applied to barter, kuan and kus, to money transactions.

At the present time selling is considered to be established with delivery of the merchandise or the payment, while exchange seems to call for a simultaneous delivery of the objects exchanged.

676 To lend something for temporary and brief use is seŋ; it is not strictly speaking a contract, and the borrower may even not be under obligation, for example when he has been loaned a tool to carry out

426 a job for profit and under the supervision of the lender. To lend on
675 long terms with actual deprivation of possession of the object loaned
is, on the other hand, a frequent affair. The same verbs mean both
"to lend" and "to borrow": yôé is used for the loan-borrowing of a
specific object, wôé for something within a class of objects or of a
sum of money. The thing loaned is ndôñ or ékôla, according as the
case may be, or, more frequently, mvôla, which means any kind of
debt or credit (mbi mvôla = creditor; mvômvôla = debtor). The
borrower is required to return in good order the ndôñ and what it pro-
duces or the ékola, increased by avutan if he has profited from the
loan. The borrower is responsible not only for the care but also for
672 the use that he makes of the borrowed object, the lender, however,
retaining a sort of joint and several responsibility vis-à-vis third parties
whom the borrower may injure by means of the borrowed object
(indemnity can be claimed by the victim of an accident from the
owner who has loaned his bicycle to the author of the accident), and
even vis-à-vis is the borrower, if he comes to harm through the
borrowed object.

427 From loan is derived hiring, indicated by the same word as the
675 loan of a specific object, yôé. /This is/ a recently introduced form
of contract, and its legal position is still vague. Like loan, hiring
may lead to the giving of a pledge, éban. The éban often involved
people until European legislation prohibited the pledging of persons,
though it is still practised clandestinely. Today it mainly involves
objects that can be returned, either to the lender or to a third person;
ownership of the security may /80/ be transferred to the lender when
repayment falls due, without extinguishing the debt. The pawning of
ungathered harvests or even of plantations is more and more common;
with plantations, however, the pledge covers rights over the produce
rather than over the land itself. When a girl is pawned, the repay-
ment of the debt, aju, is sometimes considered a sort of nsuba, as
long as the debt lasts, in any case, the children of the pawned girl be-
long to her clan and not to that of the guaranteed creditor.

231 The contract for the loan-grazing of livestock, meyale kabat
675 (yale = to raise, make grow) may seem rather peculiar at first glance.
The owner of an animal turns it over to the nyale, who must look
after it and, at the expiration of the contract, return not only the
animal but any young. The lender gets rid of the care of a flock—
he is often sending it away, moreover, to escape an animal plague—

yet takes the risk of a breach of faith on the ŋyale's part. The latter is supposed to return the flock intact, but as long as he tends it, he may do what he wants with it, putting it to use like a kind of credit. It is as well to point out that this kind of contract, which at present is falling into disuse, gave occasion to endless litigation.

The trade contract under its old name abom or the newer atiŋ bilak or atiŋ akus kaka is, on the other hand, becoming more and more widespread. A trader, nkuan bôm or mbi faryélé, advances to a bilak (from "clerk") cash and goods on the bilak's undertaking to provide the equivalent in a certain tonnage of cacao. The contract is set forth in a written "good for...," which represents recognition of the debt. The bilak exerts himself to collect the promised tonnage, usually by buying from planters of his clan, sometimes by subcontract with "small clerks," bone bekilak. The contract has a due date, with the usual contingencies; in the case of rising prices, the bilak may run into difficulties and not be able to furnish the promised tonnage unless planters of his family give him credit or sell to him below the price. Cacao buying is also done by commission, the agent, nlômon, (envoy), receiving a cash advance with which to buy as much cacao as possible. Both methods give rise to litigation, which is all the more common because the moneylender is usually a European or an African of another tribe, a "Gaboonese" in French Equatorial Africa, a Bamiléké, mone galifis (from Coast English "Grassfield") in the Cameroons.

In general a commission is always possible, whether in making a contract or in pleading in court. The person giving the commission is called mve ngul, giver of power; the agent is called mbili ngul, possessing power. They are jointly and severally responsible.

The bilaba contract, described about (41, 77), is disappearing. There survives, however, a sort of poor man's bilaba, the meyêŋ from meŋ, guest, which allows a nsoé mbe, a humble man, to levy a kind of tax on the rich, minkukum, of his clan by the simple procedure of going to visit them, carrying a present /81/ which must be returned by generous hospitality and by a counergift of higher value. This is a quasi contract, sanctioned by public opinion, which is a heavy burden on people thought to be rich; it underlies the family parasitism prevalent in large towns. The reputed nkukum who tries to escape would be accused of being hard hearted, nkem ayet, which could easily lead to a charge of sorcery.

How can these facts be reconciled with the sacrifice of the totem itself?

Sacrifice of a totem animal belongs to a special order of ideas. First of all, observe that we may use the term "animal." In fact, a totem is generally a living being. When this is not the case, the practitioner or religious agent of the sacrifice, the "sacrificing one," has the right to make a substitution, that is, to "animalize in another living being" the totem that is a spirit, a celestial phenomenon or a mineral, etc. [503]

"The totem animal is the one with whom, or rather with whose tribe, a man, representing his own person and his descendants, has made a covenant, in order to obtain services in return. This agreement usually (and we have seen that this was always the case among the Fan) "was sealed by an exchange of blood in such a way that animal and man, the family of the one and of the other, the tribe uof the first and the tribe of the second, are individuals, families, or tribes of the same blood. They are allied. From time to time it is a good thing to renew this covenant, and that is done by sacrificing a repreesentative of the animal family, a sacrifice in which man takes part as a communicant: there is a new blood exchange, a revival of the first covenant. In addition, it is a reinforcement of the special virtues of the totem, virtues which are perhaps strengthened by the presence or influence of the ancestral spirit in the animal or vegetable so consecrated, sacrificed, and eaten." (1)

1. Le Roy, op. cit., pp. 324-325.

In what circumstances, how and why, will the totem animal be thus sacrificed? For it is probably not enough to say, with the distinguished author just quoted, "From time to time it is a good thing to renew this covenant."

There will be a sacrifice of the totem:

1. Whenever a new totem is to be chosen.

This happens, first, at each "birth" in the most inclusive sense of the word or, again, at each "beginning of a new life." Such would be the establishment of a new clan, at which time the chief's totem becomes the clan totem instead of merely the